



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2014-0242; FRL-9915-94-Region 5]

**Approval and Promulgation of Air Quality Implementation Plans;
Wisconsin; Revisions to PSD and NNSR Programs**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to its authority under the Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is approving a revision to the Wisconsin State Implementation Plan (SIP) for the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs.

DATES: This final rule is effective on **[insert date 30 days after publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2014-0242. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either

electronically through www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Anthony Maietta, Life Scientist, at (312) 353-8777 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Life Scientist, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8777, maietta.anthony@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Is the Background for This Action?
- II. Effective Date of Wisconsin's Adopted Rule and Formal SIP Submission.
- III. What Action Is EPA Taking?
- IV. Statutory and Executive Order Reviews.
- I. What Is the Background for This Action?**

On March 12, 2014, the Wisconsin Department of Natural Resources (WDNR) submitted a request to EPA to revise portions

of its PSD and NNSR programs. The submittal requested that EPA approve the following revised rules into Wisconsin's SIP: (1) NR 400.02(123m) and (124); (2) NR 405.02(21)(b)5.a. and b. and 6; (3) NR 405.02(25i)(a); (4) NR 405.02(25i)(ag) and (ar)1-3; and (5) NR 408.02(20)(e) 5.a and b. and 6. On May 2, 2014, EPA published in the Federal Register (79 FR 25063) a proposal to take action on portions of the March 12, 2014, submittal that pertained to the definition of "major modification", and explicitly identify oxides of nitrogen (NO_x) as a precursor to ozone. Specifically, EPA's May 2, 2014, proposed rulemaking was limited to the following provisions: (1) NR 405.02(21)(b)5.a. and b. and 6; (2) NR 405.02(25i)(a); (3) NR 405.02(25i)(ar)(intro) and 1.; and, (4) NR 408.02(20)(e) 5.a and b. and 6. The remainder of WDNR's submission, as it relates to the identification of precursors to particulate matter of less than 2.5 micrometers (PM_{2.5}), and the definition of PM_{2.5} and particulate matter of less than 10 micrometers, will be addressed in a separate rulemaking.

Because the SIP revision was not effective at the state level at the time of the March 12, 2014, submittal, Wisconsin requested that EPA parallel process the SIP revision. EPA's May 2, 2014, proposal was contingent upon both the effectiveness of amended rules at the state level and a formal, fully adopted SIP

revision request.

II. Effective Date of Wisconsin's Adopted Rule and Formal SIP Submission.

On June 30, 2014, revisions to Wisconsin's PSD and NNSR rules, as submitted in draft to EPA on March 12, 2014, were published in the Wisconsin Administrative Register, and became effective on July, 1, 2014. On August 11, 2014, Wisconsin formally submitted its request for EPA to take final action on our May 2, 2014 proposal.

III. What Action Is EPA Taking?

EPA is approving revisions to Wisconsin rules NR 405.02(21)(b)5.a. and b. and 6; NR 405.02(25i)(a); NR 405.02(25i)(ar)(intro) and 1.; and NR 408.02(20)(e) 5.a and b. and 6., as submitted by WDNR on August 11, 2014, into the Wisconsin SIP.

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional

requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of

Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations, Lead,
Nitrogen oxides, Ozone, Reporting and recordkeeping
requirements, Sulfur oxides.

Dated: August 19, 2014.

Susan Hedman,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.2570 is amended by adding paragraph (c) (131) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(131) On August 11, 2014, the Wisconsin Department of Natural Resources submitted a request to revise Wisconsin's Prevention of Significant Deterioration and Nonattainment New Source Review rules.

(i) Incorporation by reference.

(A) Wisconsin Administrative Code, NR 405.02(21)(b)5.a. and b. and 6; NR 405.02(25i)(a); NR 405.02(25i)(ar)(intro) and 1., as published in the Wisconsin Administrative Register July 2014, No. 703, effective August 1, 2014.

(B) Wisconsin Administrative Code, NR 408.02(20)(e) 5.a and b. and 6., as published in the Wisconsin Administrative Register July 2014, No. 703, effective August 1, 2014.

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